

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 17-02

October 3, 2016

TO: Regional Directors, Officers-In-Charge, and Resident Officers

FROM: Beth Tursell, Acting Associate to the General Counsel

SUBJECT: Model Brief Regarding Intermittent and Partial Strikes

Employees seeking to improve their working conditions are more frequently engaging in multiple short-term strikes in disputes with employers. The Board's present test for determining whether multiple short-term strikes are protected is difficult to apply to these situations, and exposes employees to potential discipline for activities that should be considered protected under Section 7 of the Act. The General Counsel has therefore decided to ask the Board to clarify and modify the law regarding intermittent and partial strikes.

If the issue of whether an intermittent or partial strike is protected should arise in one of your cases, please use the analysis in the attached model brief to help you make a determination. If you determine that complaint is warranted under extant law, you should incorporate this model brief, as an alternative argument, into the counsel for the General Counsel's briefs to the Administrative Law Judge and the Board. If you determine that complaint is not warranted under extant law, but might be appropriate under the analysis in the model brief, please submit the case to the Division of Advice.

If you have any questions, please contact the Division of Advice.

B.T.

Attachment: Brief Insert -- Intermittent Strikes